IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.985 of 2007

Periyasamy .. Petitioner

vs.

1. The Secretary to Government
of India, Ministry of Home
Affairs, Dept. of Internal Security,
North Block, New Delhi.

2. The Secretary to the Government,
Public (Law and Order-F) Dept.,
Secretariat, Chennai-9.

3. The District Collector and
District Magistrate, District
Collector's Office, Tiruvarur. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

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For Petitioner : Mr.S.Vadivel Murugan
For Respondents : Mr.P.Kumaresan
ACGSC for R-1

: Mr.N.R.Elango
APP for RR2 and 3

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O R D E R

(Made by P.D.DINAKARAN, J.)

The order of detention dated 4.5.2007 passed by the third respondent herein in C.O.C.No.9/2007/N.S.A., against one Manoharan, son of the petitioner herein, in exercise of the powers

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conferred under sub Section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) read with orders issued by the Government in G.O.Ms.No.947, Public (L&O-F) Department dated 15.5.2007, is being challenged in this petition by the father of the said Manoharan, seeking to issue writ of habeas corpus calling for the records in connection with the detention order and quash the same and to direct the respondents to set the detenu Manoharan, now detained in Central Prison, Tiruchirapalli at liberty.

2. The ground case, on the basis of which the detaining authority passed the impugned detention order, is that on 21.4.2007 at about 9.00 a.m., one Palanivel lodged a complaint before the Inspector of Police, Muthupettai Police Station, alleging that the statue of E.V.R. Periyar erected at the outlet of Muthupettai New Bus Stand was disintegrated and its head and hands were missing and hence, necessary action has to be taken against the culprit. Based on the said complaint, a case was registered in Crime No.103 of 2007 for offences under Sections 153, 427, 120(b) of I.P.C. read with Section 3(1) of Tamil Nadu Public Property (Damage and Loss) Act, 1992 and investigation was taken up. During investigation, the detenu Manoharan and his associate were arrested and when interrogated, they gave confessional statements, on the basis of which, the head of E.V.R. Periyar and other properties were seized. The detenu and his associate were produced before Judicial Magistrate, Thiruthuraipoondi, for remanding them into judicial custody.

3. The detaining authority, the third respondent herein, taking note of the above ground case and also finding that the detenu came to the adverse notice of the authorities in two cases, viz. in Crime No.90 of 2005 registered on the file of Perugavalanthan Police Station for offences punishable under Sections 147, 341, 323, 294(b) and 506(ii) I.P.C. and in Crime No.398 of 2005 on the file of Muthupettai Police Station for offences under Sections 294(b), 352 and 506(ii) I.P.C., having satisfied that the detenu Manoharan acted in a manner prejudicial to the maintenance of public peace, national harmony and instigation of ill-feeling on caste, religious and communal basis, ordered his detention in order to prevent him from indulging in such activities which are prejudicial to the security of the Nation.

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4. The learned counsel for the petitioner inviting our attention to para 10 of the grounds of detention, viz.,

> "On 25-4-2007, a petition was received from one Thiru Periasamy of Alangadu Village, Tiruvarur District stating that his son Thiru Manoharan was taken by Muthupettai Police and registered a false case against him as he is

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involved in the demolition of E.V.R.Periyar statue and did not try to arrest the real culprit and they are trying to register a case against him under National Security Act, stop impose against him. In this regard, after conducting detailed enquiry by the Revenue Officials, the petition is not considered in favour of the petitioner.",

contends that admittedly, the detaining authority has relied upon the report of the revenue officials while rejecting the pre-detention representation made on behalf of the detenu and the said report of the revenue officials does not find place in the paper book furnished to the detenu along with the grounds of detention, which deprived of his valuable right to make an effective representation objecting to the order of detention, as envisaged under Article 22(5) of the Constitution of India and as required under Section 8(1) of the National Security Act, before the Government or the Advisory Board. In support of the said plea, the learned counsel also relied upon the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

5. On the above point, we heard the learned Additional Central Government Standing Counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for respondents 2 and 3.

6. In POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document, was not supplied to the detenue even though it was demanded by the detenue, the Apex Court held thus -

" 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

7.1. That apart, a Division Bench of this Court in an unreported decision in H.C.P.No.1256 of 2006 (between Maheswari v. The Secretary to Government, Food and Consumer Protection Dept. and others), by order dated 5.2.2007, while considering a similar case

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of non-furnishing of Revenue Divisional Officer's Report as to the antecedents and activities of the detenu, held that the report of the Revenue Divisional Officer is a vital document and non-supply of such document to the detenu would certainly deprive his valuable right to make an effective representation to the Government or the Advisory Board.

7.2. The above view was subsequently followed by this Court in unreported decisions in H.C.P.No.320 of 2007 (between Balaji v. State and others) by order dated 4.7.2007 and in H.C.P.No.539 of 2007 (between Kuppandi @ Kuppusami v. State and others) by order dated 16.8.2007.

8. Undoubtedly, in the instant case, as seen from para 10 of the grounds of detention, extracted above, the detaining authority has relied upon the report of the revenue officials made after a detailed enquiry and rejected the pre-detention representation dated 25.4.2007 made on behalf of the detenu and the said report of the revenue authorities, was not furnished to the detenu while the other materials were furnished, which has deprived of the opportunity of the detenu to submit his effective representation objecting to the order of detention. Both the learned Additional Central Government Standing Counsel and the learned Additional Public Prosecutor also concede that the said document was not furnished to the detenu.

9. In that view of the matter, we are convinced that the detaining authority has failed to take into consideration the said non-furnishing of a vital document to the detenu, which prejudiced the detenu in making his effective representation and thus, vitiates the impunged order of detention. Hence, we are inclined to allow this writ petition on this ground.

In the result, the habeas corpus petition is allowed and the order of detention is set aside. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

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2. The Secretary to the Government,
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3. The District Collector and
   District Magistrate, District
   Collector's Office, Tiruvarur.

4. The Superintendent,
   Central Prison, Tiruchirapalli.

5. The Joint Secretary to Government,
   Public (Law and Order),
   Chennai-9.

6. The Public Prosecutor,
   High Court, Madras.

1 cc to Mr.S.Vadivel Murugan, Advocate, SR.67599

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dv/11.12.

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